

MINUTES

TENNESSEE BOARD OF MEDICAL EXAMINERS

March 10, 2011

The meeting for the Board of Medical Examiners was held at 5:00 p.m. in the Iris Room, Ground Floor at 227 French Landing, Heritage Place Metrocenter, Nashville, TN 37243.

Members in attendance electronically: Drs. Mitchell Mutter, Subhi Ali and Ms. Monica Franklin.

Staff Present: Rosemarie Otto, Executive Director; Larry Arnold, Medical Director; Sandra Powell, Board Administrator; Marsha Arnold, Unit Manager and David Himmelreich, Deputy General Counsel.

Administrative Law Judge: Marion Wall

Contested Case Hearing

Harry A. Zain, MD-Dr. Zain was present and represented by attorney, C.J. Gideon. Mr. Shiva Bozarth represented the Tennessee Department of Health. Marion Wall, Administrative Law Judge presided. Dr. Zain treated a patient from October, 2007 until about January, 2010 and wrote approximately fifteen (15) prescriptions from May, 2009 until January 2010. Dr. Zain had a sexual relationship with the patient during the period of time he wrote prescriptions for her. After closing argument from both sides, Administrative Law Judge Wall charged the panel members and turned the proceedings over to them. The Panel deliberated. The panel completed their findings of fact and conclusions of law at the previous hearing and continued their deliberations. Mr. Bozarth handed out the proposed Final Order to the panel. Dr. Ali made a motion to accept the Conclusions of Law # 13 and Ms. Franklin seconded the motion. The motion passed. Dr. Ali made a motion to accept the Conclusions of Law #14 and Ms. Franklin seconded the motion. The motion passed. Dr. Ali made a motion to accept the Conclusions of Law #15 and Ms. Franklin seconded the motion. The motion passed. Ms. Franklin made a motion to place Dr. Zain on probation for three years and after three years must petition for an Order of Compliance before the probation can be lifted. Dr. Ali seconded the motion. Dr. Mutter opposed. The motion passed. Dr. Ali made a motion to assess seventeen Type A civil penalties of five hundred dollars (\$500.00) each for a total of seven thousand five hundred dollars (\$7, 500.00). Ms. Franklin seconded the motion. The motion passed. Dr. Ali made a motion to assess all costs and Ms. Franklin seconded the motion. The motion passed. Ms. Franklin made a motion that Dr. Zain must pay civil penalties prior to asking for an Order of Compliance. Dr. Ali seconded the motion. The motion passed. The policy statement was read and the reasons for action taken is to

protect the health, safety and welfare of the citizens of the State of Tennessee. Dr. Ali accepted the policy statement and Ms. Franklin seconded the motion. The motion passed.

Consent Order

Deborah D. Barton, MD-Dr. Barton was neither present nor represented by legal counsel. Mr. Marc Guilford represented the Tennessee Department of Health. The proposed Consent Order was handed to the panel for review. For a period of time through November 2010, and after experiencing back pain, Dr. Barton prescribed herself hydrocodone, a scheduled II controlled substance, and other controlled substances. During this period, Dr. Barton ordered substantial quantities of these controlled substances to be shipped to a drop box at a United Parcel Service Store in Knoxville, received the controlled substances, and dispensed the controlled substances to herself. In November 2010, Dr. Barton admitted that she ordered hydrocodone to prescribe to herself and to family members and did not keep records of the hydrocodone she prescribed and dispensed, and was unable to generate a list of the people to whom she had given the hydrocodone. Dr. Barton ceased ordering controlled substances and sought medical care. In about early January 2011, Dr. Barton voluntarily agreed to complete a full evaluation through the Vanderbilt Comprehensive Assessment Program (VCAP), and to share the report of the evaluation with the Office of General Counsel and the Board's Medical Director. The Proposed Consent Order stipulated that Dr. Barton's medical license shall be placed on indefinite suspension. Ms. Franklin made a motion to accept the Consent Order and Dr. Ali seconded the motion. The motion passed.

Adjourned 6:30 p.m.

Ratified by the Board on March 22, 2011